



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO TOWN OF POCAHONTAS SEWAGE TREATMENT PLANT VA0029602

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15 (8a) and (8d), between the State Water Control Board and the Town of Pocahontas, for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "SWRO" means the Southwest Regional Office of the Department.
6. "Order" means this document, also known as a consent special order.
7. "Town" means the Town of Pocahontas.

8. "Facility" means the sewage treatment plant located on Frog Pond Road in Tazewell County.

SECTION C: Findings of Facts and Conclusions of Law

1. The Town owns and operates the Facility and associated collection lines pursuant to VPDES permit VA0029602 which was issued on January 9, 2000 and which expires on January 9, 2005. The Facility discharges to Laurel Fork Creek in the New River Basin.
2. The Town was issued a Notice of Violation ("NOV") on July 31, 2002 which listed, among other things, the following deficiencies in plant operations:
 - The comminutor at the main pump station is an integral part of the treatment Facility and must be replaced.
 - The lift station emergency pump must be repaired or replaced.
 - The Facility continues to operate under a hydraulic overload due to excessive I/I problems.
 - The last manhole prior to the sewage treatment plant has an overflow pipe installed which discharges directly to Laurel Fork Creek. This overflow is an unpermitted discharge and must be removed or sealed.
3. A Warning Letter was issued to the Town on August 30, 2002 which noted that the ammonia parameter limit had been exceeded on the July 2002 discharge monitoring report (DMR). The Town addressed the ammonia violation in a letter to DEQ.
4. The Town and DEQ met on September 9, 2002 to discuss the deficiencies in plant operations and the Town agreed to quickly bring the Facility into compliance with the law and regulations.
5. The Town sent a letter to DEQ on October 7, 2002 which stated that a used comminutor had been purchased and was presently being installed. The letter also said that repairs to the lift station emergency pump would be completed within a few days. The Town reported that the overflow pipe was sealed.
6. The Facility's DMR for October 2002 was submitted 10 days late. The Town has addressed their problem with late reporting.
7. The Facility's DMR for November showed that the Chlorine parameter exceeded the permit limits. The Town submitted an amended DMR to correct an error in reporting.

8. DEQ conducted an inspection of the Facility on November 13 and 14, 2002. The inspector noted that the installation of the comminutor and repairs to the emergency pump were not complete and the equipment was not operable. The inspector also saw the plant operator pumping wastewater from the lift station directly to Laurel Fork Creek. The bypass was the result of heavy rains and the need to protect the main plant pump from being flooded. The plant operator was told that the Permit did not allow an intentional bypass without prior notice and approval from DEQ.
9. A NOV was issued to the Town on January 16, 2003 which stated that the Facility was not being operated and maintained according to the Permit and that a bypass occurred on November 13, 2002 and prior notice was not submitted to DEQ as required by the Permit.
10. The Permit, Part II, Section Q (Proper Operations and Maintenance) states that the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed and used by the permittee to achieve compliance with the conditions of this permit. Part II, Section U.2a requires prior notice to DEQ of an anticipated bypass.
11. The Virginia Water Control Law § 62.1-44.5A and state regulation 9 VAC 25-31-50A state that it is unlawful to discharge sewage into state waters except in compliance with a VPDES permit.
12. The Town and DEQ met on March 3, 2003 to resolve the Facility's compliance issues.

SECTION D: Agreement and Order

Accordingly the Board, by virtue of the authority granted it pursuant to Va. Code § 62.4-44.15 (8a) and (8d), orders the Town, and the Town agrees, to perform the actions described in Appendix A of this Order

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the Town, for good cause shown by the Town or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce

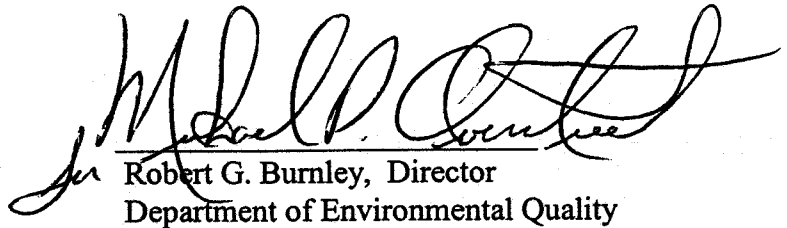
the terms of this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, the Town admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The Town declares it has received fair and due process under the Administrative Process Act, Code § 2.2-4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
5. Failure by the Town to comply with any of the terms of this Order shall constitute a violation of an Order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. The Town shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. The Town must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. The Town shall notify the Director and the Director of the SWRO in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to notify by phone the Director and the Director of the SWRO within 24 hours of learning of any condition listed above, which the Parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and the Town. Notwithstanding the foregoing, the Town agrees to be bound by any compliance date which precedes the effective date of this Order.
10. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the Town. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Town from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
11. The Town consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
12. By its signature below, the Town voluntarily agrees to the issuance of this Order.

Date: June 22, 2004


Robert G. Burnley, Director
Department of Environmental Quality

Town of Pocahontas

By: [Signature]
(Name)

Title: MAYOR

Date: 01/23/09

State of Virginia
City/County of GARRETT

The foregoing instrument was acknowledged before me this 1/23/04 by
(date)

John P. Hurley, Mayor of the Town of Pocahontas, on behalf of
(name) (title)

the Town.

1/23/04
Date

[Signature]
Notary Public

My commission expires: 3/31/05

APPENDIX A

In order to comply with the provisions of the State Water Control Law and Regulations, the Town agrees to implement the following actions:

1. Within 30 days of the effective date of the Order, complete the installation of the comminutor and repair or replace the lift station emergency pump.
2. Within 9 months of the effective date of the Order, complete an engineering evaluation survey for the plant and sewer system addressing necessary upgrades to the plant and elimination of I & I sources in the sewer system and submit a report to the SWRO. The report shall also contain a Schedule of Compliance for plant upgrade and elimination of I/I sources. The Schedule shall include, at a minimum, the following items with estimated completion dates for each item.
 - A. Plant Upgrade or Alternative of Connecting to County PSA
 - Prepare preliminary engineering report (PER) for plant upgrade or PSA alternative. MM/DD/YY
 - Secure funding. MM/DD/YY
 - Begin construction of plant upgrade or alternative. MM/DD/YY
 - Complete construction. MM/DD/YY
 - B. Rehabilitation and Replacement of Collection Lines
 - Prepare PER for repair/replacement of collection lines. MM/DD/YY
 - Secure funding. MM/DD/YY
 - Complete line repair/replacement as required. MM/DD/YY
3. Within 30 days of submittal, the DEQ shall either approve, modify and approve or disapprove the Schedule. If disapproved, DEQ shall state the reasons therefore. Within 30 days of receipt of written documentation of disapproval, the Town shall resubmit the Schedule to DEQ with all noted deficiencies addressed. Once approved, the Schedule of Compliance shall become an enforceable part of the Order.
4. The Town shall submit **quarterly progress reports** to the SWRO on its progress in meeting the requirements of this order with the first report, for the reporting period of July 1 through September 30, due on October 15, 2003 and in the same manner continue to submit quarterly reports until the project is completed.
5. During the interim period, while work is in progress, the Town shall operate the Facility in an efficient and workman like manner and provide adequate manpower and funds to minimize

and prevent overflows and bypasses.

6. All plans and reports to be submitted to the SWRO shall be mailed to the attention of Ruby Scott, Compliance Auditor, P.O. Box 1688, Abingdon, VA 24212.